IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9392 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

GUJARAT STATE FERTILIZERS & CHEMICALS LTD

Versus

DY COMMISSIONER OF INCOMETAX (ASSESSMENT)

Appearance:
MR JP SHAH for Petitioner
MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.

Date of decision: 16/01/97

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

Rule. The learned Counsel appearing for the respondent waives service of Rule and the matter is taken up for final disposal at the request of both the sides.

The petitioner challenges the order made under

Section 220(6) of the Income Tax Act, 1961 which is at Annexure "F" by which it was held that the assessee may not be treated as in default within the meaning of Section 220(6) in case the condition imposed under the order was fulfilled and no coercive measures as provided will be taken to recover the balance demand, until disposal of the appeal.

An order was made under Section 143(3) of the Act on 31.3.95 raising a demand of Rs. 52,03,43,426/- of which according to the Department, an amount of Rs. 43,77,21,488/- was outstanding and the assessee was therefore, asked to pay the demand immediately. Thereafter, an application was made under sub-section (6) of Section 220 for not treating the assessee in default in respect of the amount in dispute as long as the appeal remained undisposed of. According to the assessee, disallowance was made in respect of the covered issues namely pre-operative expenses of interest on Caprolactum Project, depreciation on Caprolactum expansion project, Guest-house expenses and interest on borrowed funds. The case of the petitioner is that in fact an amount of Rs. 11,27,35,845/- was due to be refunded to the petitioner assessee and if the tax in respect of the covered points was excluded, the petitioner was not required to pay any tax.

Reliance has been placed on behalf of the petitioner on Circular No. 530 dated 6.3.1989 in support of its contentions. As per the circular No. 530 dated 6.3.1989 guidelines were issued by the Board that on an application being filed by the assessee in that regard, the assessing officer will exercise his discretion under Section 220(6) subject to such conditions as he may think fit to impose, so as to treat the assessee as not being in default in respect of the amount in the appeal in the situations indicated in paragraph 2 of the circular. Accordingly, where the demand in dispute relates to issues that have been decided in favour of the assessee in an earlier order by an appellate authority or a Court in assessee's own case, the assessee was to be treated as not being in default in respect of the amounts attributed to such disputed amounts.

According to the petitioner, the point of disallowance of interest of Rs. 29,96,55,759/- on borrowing for Caprolactum Expansion Plant was covered by the decision of the CIT (Appeals) in the case of the petitioner itself for the assessment year 1990-91 and the point in issue was also covered by the decision of this High Court and other decisions. As regards the

depreciation claim of Rs. 28,31,73,245/- in respect of expansion plant and on other points in respect of guest house expenses of Rs. 16,34,894/-, the points were covered by the decisions of this Court in 192 ITR 608 and 197 ITR 539, according to the petitioner.

The learned Counsel for the Department has worked out the figures keeping out of the consideration the disallowance made in the assessment on the covered issues which shows that when the disallowance under the aforesaid four covered issues totalling to Rs. 56,57,16,534/- is kept out of consideration, then the total assessable income would be Rs. 26,96,45,016/- and the tax demand on that income including surcharge would be approximately Rs. 13,50,00,000/-. As against this, the figures of taxes paid, as given by the Department, are 13,31,52,312/-. In view of these facts and keeping in view the petitioner's claim for refund of Rs. 11,27,35,845/- or the higher amount as orally suggested on behalf of the petitioner, which the petitioner would want to be adjusted against dues if any, there was absolutely no justification for imposing the condition of paying 20% of the outstanding demand under the order made by the Deputy Commissioner of Income Tax under Section 220(6) of the Act. We therefore, strike out the said condition imposed under the said order, as a result of which the assessee will not be treated as a defaulter during the pendency of the appeal. As a consequence of this order the petitioner will make a fresh application for the certificate under Section 281(1) of the said Act and the concerned authority will issue the necessary certificate on the footing that the said condition has been struck out from the subject order. The concerned authority will issue the necessary certificate in accordance with law within two weeks after receiving the application from the petitioner for such certificate. Rule is made absolute accordingly with no order as to costs.
